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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL TOBACCO COMPANY, L.P.

Plaintiff,

v.

TIMOTHY PARKER and XAVIER
MOSLEY, p.k.a. BLACKALICIOUS,
RAYMOND RILEY p.k.a. BOOTS RILEY,
SOLOMON DAVID and MARLON IRVING,
p.k.a. LIFESAVAS,

Defendants.

ECF Case

08-CV-03383(SAS)

**MOTION TO DISMISS FOR
IMPROPER VENUE AND FORUM
NON CONVENIENS**

Now come the Defendants TIMOTHY PARKER and XAVIER MOSLEY, p.k.a. Blackalicious, RAYMOND RILEY p.k.a. Boots Riley, and SOLOMON DAVID and MARLON IRVING, p.k.a. Lifesavas (collectively "Defendants"), by and through their attorneys, DRINKER BIDDLE & REATH LLP, and bring this motion, pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 1404 and 1406, for dismissal of the claims alleged in Plaintiffs' Complaint based on the doctrine of *forum non conveniens* or, in the alternative, transfer to a more appropriate venue. In support of its Motion, the Defendants state as follows:

1. Defendants Solomon David, Xavier Mosley, Timothy Parker and Raymond Riley

are residents of Alameda County, California. Defendant Marlon Irving is a resident of Portland, Oregon.

2. Plaintiff National Tobacco Company, L.P. (hereinafter "Plaintiff" or "NTC") is a Delaware limited partnership doing business at all times within Alameda County in the State of California.

3. Plaintiff filed an Amended Complaint seeking declaratory judgment and monetary damages against Defendants for defamation, tortious interference with contract and trade libel suing Defendants for threat of litigation, defamatory statements and libelous statements on April 9, 2008.

4. The Defendants filed substantive complaints against NTC on April 11, 2008 in the U.S. District Court, Northern District of California. *See Riley et al. v. National Tobacco Company, LP*, Complaint, Case No. 3:08-cv-01931-JSW (N.D. Cal., Apr. 11, 2008), attached hereto as Exhibit 1; *see also Parker et al. v. National Tobacco Company, LP*, Complaint, Case No. 3:08-cv-10933-WHA (N.D. Cal., Apr. 11, 2008), attached hereto as Exhibit 2. Only four days *after* filing their complaints in California were the Defendants served with the Plaintiff's New York Complaint.

5. Venue in the Southern District of New York is improper as no party to this action is a resident of New York and no single event giving rise to this litigation took place in New York.

6. Plaintiff's assertion in its complaint that venue in the Southern District of New York is proper under the forum selection clause of a contract signed by the Plaintiff is improper because the Defendants were not parties to the contract. The contract upon which Plaintiff relies in asserting jurisdiction was entered into by the Plaintiff and Paul Peck, a manager of Galactic

Funk Touring, Inc. and third party to this action, and thus the forum selection clause is not controlling against the Defendants.

7. Analysis under the doctrine of *forum non conveniens* further suggests that this matter should be dismissed or, in the alternative, transferred to the Northern District of California.

8. The Court should show no deference toward the Plaintiff's choice of venue as it is not substantially connected to the facts of the case and the Plaintiff has far greater resources to litigate the matter away from its Kentucky headquarters.

9. An adequate alternative forum meeting both of these requirements exists in the Northern District of California, which is home to four of the five Defendants (with the fifth residing nearby in Portland, Oregon).

10. Public considerations weigh in favor of dismissing the claim as none of the relevant facts of this case are tied to New York and New York laws are not invoked in this matter.

11. Private factors likewise weigh in favor of transfer. With five of the six parties to this action being located on the West Coast, adjudicating this matter in the Northern District of California would clearly avoid unnecessary increased expenses on the part of the Defendants and inefficiencies in communicating with the Defendants and potential fact witnesses, many of whom are in the entertainment industry and reside in California or Oregon.

WHEREFORE, Defendants TIMOTHY PARKER and XAVIER MOSLEY, p.k.a. Blackalicious, RAYMOND RILEY p.k.a. Boots Riley, and SOLOMON DAVID and MARLON IRVING, p.k.a. Lifesavas request that this Court enter an Order dismissing Plaintiff's Complaint

on the grounds of improper venue and *forum non conveniens*, or in the alternative transfer this motion to the Northern District of California.

Dated: May 29, 2008

s/David B. Sudzus
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on May 29, 2008, I caused a true and correct copy of Motion to Dismiss for Improper Venue and Forum Non Conveniens to be electronically filed with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following to all counsel for Plaintiff and Defendants as listed below:

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Blackalicious, Raymond Riley p.k.a.
Boots Riley, Solomon David and Marlon
Irving, p.k.a. Lifesavas**

Dated: May 29, 2008

s/David B. Sudzus

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